

REMARKS

The application is believed to be in condition for allowance.

There are no formal matters outstanding.

Claims 17 and 24 are indicated to be directed to allowable subject matter.

Claims 15, 21, and 28 are independent.

Claims 15, 16, 19-23 and 26-28 are rejected as obvious over FORSTER 6,281,797.

Applicant respectfully disagrees.

There is no teaching or suggestion in FORSTER of simultaneous use of plural detection methods.

This plural simultaneous detection is necessary to satisfy the present claims.

Each of the independent claims recites to re-enable emission of radio frequency signals from the remote communication device responsive to a lack of detecting proximity to an aircraft by the sensing system/step, simultaneously with the positioning system/step being able to obtain positioning information of the container.

It is not clear that the Official Action has properly considered the claims.

The Official Action discusses claim 15 on page 3, i.e., re-enabling emission of radio frequency signals from the remote communication device responsive to simultaneously 1) not

receiving RF transmission (not detecting proximity by sensing step), and 2) successfully obtaining positioning information (e.g., GPS info). The Official Action correctly characterizes the invention, two different systems operating at the same time so that there is re-enabling emission of radio frequency signals from the remote communication device when the sensing step/system does not detect proximity, and simultaneously the positioning information is successfully obtained.

The Official Action on page 4 acknowledges that FORSTER does not disclose the two conditions occurring simultaneously.

Confusingly, the Official Action states that FORSTER teaches to perform actions sequentially i.e., "de-activating a tracking device attached to a container and reactivating the transmission when it is determined that disablement of the transmission was due to lack of reception of the positioning information from the GPS and when the positioning information is received successfully by the GPS receiver (118)". Put another way, FORSTER teaches to use a GPS and de-activate when the GPS signal is lost and re-activate when the GPS signal is present.

The Official Action states that it is merely a user preference to perform the steps sequentially or simultaneously.

This is incorrect.

There cannot be simultaneously reception of a system signal and non-reception of the same system signal.

Thus, as the teaching of FORSTER is to only use a single detection system, a sequential approach is required.

There is no teaching of using plural detection systems at the same time or any teaching that there might be an advantage of using plural detection systems simultaneously.

FORSTER discloses methods and apparatuses for detecting a container proximate to a transportation vessel hold, disclosing a variety of alternative approaches, e.g., detection of RF signals and the absence of GPS signals.

Please refer to Figure 6, reproduced below to see the alternative nature of the FORSTER approaches.

FORSTER teaches that once one particular detection principle is used for deactivating the remote communication device, the very same detection principle is also used for reactivating the remote communication device.

More precisely, if the lack of GPS signal was the cause of deactivation, as checked in step 333 of Figure 6, then the reappearance and only the reappearance of the GPS signals can cause a reactivation, see steps 339 and 347.

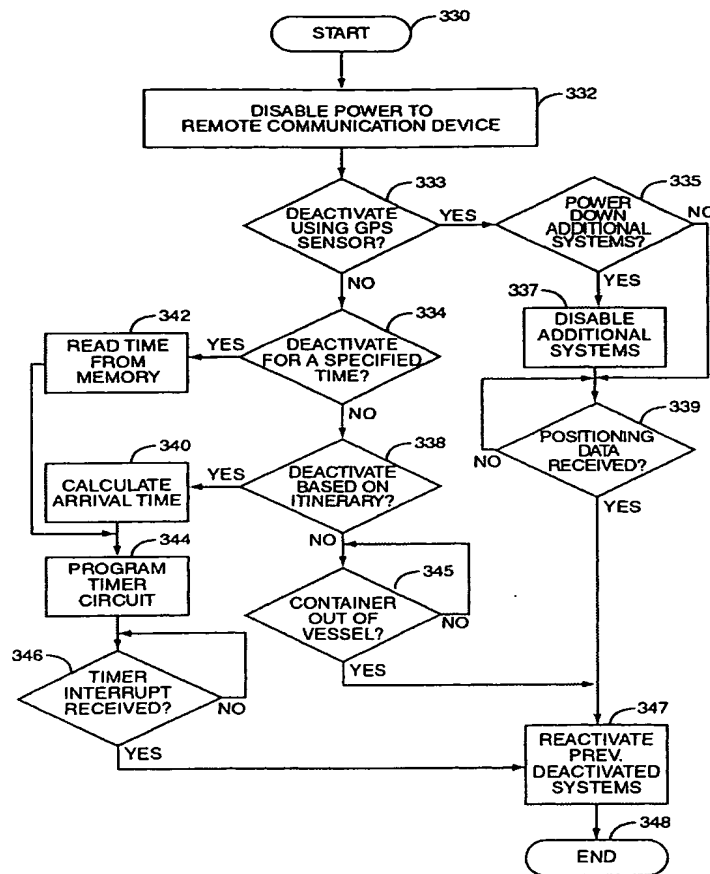


FIG. 6

If on the other hand, a detection of the vessel is used, e.g., the presence of a particular RF signal, the step 333 permits the operation to proceed eventually to step 345. In step 345, the vanishing and only the vanishing of the vessel proximity signals, such as the RF signal can cause a reactivation in step 347.

The Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden

shifts to the Appellants to overcome the prima facie case with argument and/or evidence. (See *Id.*) The Examiner has not satisfied this burden.

In performing this obviousness analysis, the Examiner is required to make findings of fact and must provide an articulated reasoning supporting the rejection. The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

The Supreme Court citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) stated that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary

considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). See also *KSR*, 127 S.Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

The Examiner hasn't made sufficient findings of fact to support the present rejection.

As stated by MPEP §706.02(j), to establish a prima facie case of obviousness the Official Action must first, consider the relevant teachings of the prior art, and after determining the differences between the pending claim and the prior art teachings, second, propose modifications of the prior art necessary to arrive at the claimed subject matter, explaining the motivation for combining the particular references and making the proposed modifications to those references. Thus, there must be motivation to modify the references and a teaching or suggestion of all the claim recitations. This motivation must not be merely pro forma.

Under the section 103 obviousness analysis, the scope and content of the prior art is to use any one of plural alternative detection systems, where the lack of signal causes deactivation (step 333) and the reappearance of the same signal causes reactivation (steps 339 and 347). There is no motivation to deviate from this prior art.

Thus, the Official Action's articulated reasoning in the rejection does not possess a rational underpinning to support

the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Note, "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988). In an obviousness rejection, it is impermissible "to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965). Rather, "The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art." *In re Dow Chemical Co.*, 837 F.2d 469, 473 (Fed. Cir. 1988).

Anyone skilled in the art, at the time of the application, was by FORSTER informed about a number of different detection principles to be used in the context of tracking containers. The disclosure is designed for offering a wide range of alternative methods, from which the skilled in the art could make his selections. However, the different detection principles were not thoroughly evaluated in FORSTER concerning safety aspects during the phase of reactivating the communication device

in different scenarios. Advantages may from case to case guide the skilled in the art to at least remove the least advantageous detection principles from the list of potential possibilities. There is absolutely no reason for the skilled in the art to require more than one of the detection principles. A combination would be more complex and expensive to implement and the skilled in the art obviously would look in the opposite direction. If more than one detection principles anyway were to be used, such a use would operate more for redundancy reasons in case of detector failure (as expressed by Fig. 6).

It was not until the present inventor found scenarios where all the single detection principles of FORSTER would fail, that the first motivation to look for different solutions appeared. One example of such a scenario would be an airplane on which a container is loaded. The airplane has its electrical system running when the container is loaded and the detection of typical frequencies of RF signals is causing a deactivation of the communication device. (Step 334 in Fig. 6 would direct the process to step 345.) The airplane takes off, but during the flight, the electrical system fails. A security DC electrical system is then turned on to serve only the most vital operations of the airplane. However, at the same time the RF signal also disappears, since DC electrical systems do not emit RF signals. The detector on the container will interpret the situation as if the container has left the airplane and will reactivate the

communication device. (Compare steps 345 and 347 of Fig. 6.) This is the worst possible occasion for the communication device to start to send, and the entire safety of the airplane is threatened.

When having realized that such scenarios are possible and indeed may be very dangerous, the inventor looked for new approaches. By selecting a very distinct combination of the RF detection (which indeed was the basic failing method) and the GPS detection, it was possible to circumvent the problems. It is thus not only any combination between two arbitrary detection methods, but the very best combination for this particular problem. Furthermore, the combination is made particularly for the reactivation process. The deactivation process can still be performed by a single detection method. Such aspects are without the skills of an ordinary skilled person within the art.

As a conclusion, it would not be obvious for anyone skilled in the art to require a simultaneous detection of an absence of RF signals and detection of a presence of GPS signals, in order to allow a reactivation of the communication device.

As the claims are believed non-obvious, allowance of all the claims is solicited.

This response is believed to be fully responsive and to put the case in condition for allowance. An early and favorable action on the merits is earnestly requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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